

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DONALD C. PRESTON AND SUNCHIA PRESTON,
PLAINTIFFS,

V.

CASE NO. 1:19-cv-_____

THE UNITED STATES OF AMERICA AND
HEATHER CABRAL SILVERO, D.O.,
DEFENDANTS.

PLAINTIFFS' COMPLAINT

COUNT I

1. THE PLAINTIFF, **Donald C. Preston**, is a resident of Methuen, Essex County, Commonwealth of Massachusetts.
2. The Defendant, The United States of America, is a public employer within the meaning of 28 U.S.C. §1346(b) and 2671 *et seq.*, and at all times herein, Heather Cabral Silvero, D.O. was an employee of federally funded, Edith Nourse Rogers Memorial Veterans Hospital, which has been deemed by the Public Health Service eligible for protection under the Federal Tort Claims Act pursuant to 42 U.S.C. §233.
3. This action is brought to recover for the severe and permanent personal injuries of Donald C. Preston pursuant to 28 U.S.C. §§1346 and 2671 *et seq.*
4. Jurisdiction is based on 28 U.S.C. §1346(b), the Federal Tort Claims Act.
5. All statutory conditions precedent to filing suit have been met.
6. At all times relevant to this complaint, the Defendant, The United States of America, by its agents, servants, or employees, represented and held itself out to be skilled in the treatment of various illnesses and conditions and, in particular, represented to the Plaintiff, Donald C. Preston, that it was knowledgeable, competent, and qualified to diagnose and treat Mr. Preston in or about December, 2012 to April, 2018.
7. In or about December, 2012 to April, 2018, the Plaintiff, Donald C. Preston, submitted himself to the care and treatment of the Defendant, The United States of America, by its agents, servants, or employees, who negligently and carelessly and without regard for the Mr. Preston's health and well-being, treated him in a manner which resulted in the his severe and permanent personal injuries.

8. The severe and permanent personal injuries sustained by the Plaintiff, Donald C. Preston, were the direct and proximate result of the carelessness, unskillfulness, negligence, and improper care and treatment by the Defendant, The United States of America, by its agents, servants, or employees, including but not limited to the following:
 - a. its misrepresentations to Donald C. Preston that it was knowledgeable, skillful, and competent to diagnose and treat him in or about December, 2012 to April, 2018;
 - b. its failure to adequately and properly diagnose the medical condition of Donald C. Preston in or about December, 2012 to April, 2018, and its failure to properly treat said condition;
 - c. its failure to recognize, or to have the knowledge to recognize, its inability and lack of skill to treat Donald C. Preston, when it knew, or should have known, of the foreseeable consequences of its inability and failure to properly and skillfully provide him with acceptable medical care and treatment;
 - d. its failure to possess and exercise that degree of skill, training, and care as is possessed and exercised by the average qualified members of the medical profession practicing its specialty;
 - e. its failure to inform and to warn of the risks involved in or associated with the condition of Donald C. Preston and failure to inform and to warn about the treatment of said condition.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, by its agents, servants, or employees, in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT II.

1. THE PLAINTIFF, **Donald C. Preston**, repeats and reavers all of the allegations contained in Paragraphs One through Eight of Count I above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the Plaintiff, Jayden Donald C. Preston.
3. As the direct and proximate result of the carelessness and negligence of the Defendant, The United States of America, by its agents, servants, or employees, the Plaintiff, Mr. Preston's, was caused to suffer severe and permanent personal injuries.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, by its agents, servants, or employees, in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT III.

1. THE PLAINTIFF, **Donald C. Preston**, is a resident of Methuen, Essex County, Commonwealth of Massachusetts.
2. The Defendant, The United States of America, is a public employer within the meaning of 28 U.S.C. §1346(b) and 2671 et seq., and at all times herein, Heather Cabral Silvero, D.O. was an employee of federally funded, Edith Nourse Rogers Memorial Veterans Hospital, which has been deemed by the Public Health Service eligible for protection under the Federal Tort Claims Act pursuant to 42 U.S.C. §233.
3. This action is brought to recover for the severe and permanent personal injuries of Donald C. Preston pursuant to 28 U.S.C. §§1346 and 2671 et seq.
4. At all times relevant to this complaint, the Defendant, The United States of America, by its agents, servants, or employees, represented and held itself out to be skilled in the treatment of various illnesses and conditions and, in particular, represented to Mr. Preston that it was knowledgeable, competent, and qualified to diagnose and treat him in or about December, 2012 to April, 2018.
5. In or about December, 2012 to April, 2018, the Plaintiff, Donald C. Preston, submitted himself to the care and treatment of the Defendant, The United States of America, by its agents, servants, or employees, who negligently, carelessly, and recklessly and without regard for the Plaintiff's health and well-being, treated Mr. Preston in a manner which resulted in his severe and permanent personal injuries.
6. The severe and permanent personal injuries sustained by the Plaintiff, Donald C. Preston, were the direct and proximate result of the malicious, willful, wanton, or reckless conduct of the Defendant, The United States of America, by its agents, servants, or employees, or by the gross negligence of the Defendant in or about December, 2012 to April, 2018.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, by its agents, servants, or employees, in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT IV.

1. THE PLAINTIFF, **Donald C. Preston**, repeats and reavers all of the allegations contained in Paragraphs One through Eight of Count I, Paragraphs One through Three of Count II, and Paragraphs One through Six of Count III above, as if expressly rewritten and set forth herein.
2. In or about December, 2012 to April, 2018, average qualified members of the medical profession practicing the Defendant's specialty knew or should have known of the risks,

potential consequences, and alternatives to the Defendant's choice of treatment of Donald C. Preston.

3. In or about December, 2012 to April, 2018, the Defendant, The United States of America, by its agents, servants, or employees, knew, or should have known, of the risks, potential consequences, and alternatives to the Defendant's choice of treatment of Donald C. Preston.
4. In or about December, 2012 to April, 2018, the Defendant, The United States of America, by its agents, servants, or employees, did not inform the Plaintiff of the alternatives to and risks and potential consequences of the Defendant's choice of treatment of Donald C. Preston.
5. If the Defendant, The United States of America, by its agents, servants, or employees, had informed the Plaintiff of the alternatives to and risks and potential consequences of the Defendant's choice of treatment of him, neither the Plaintiff nor a reasonable person in his position would have elected the Defendant's choice of treatment.
6. The alternatives to and the risks and potential consequences of the Defendant's choice of treatment were material to a decision by the Plaintiff and a reasonable person in his position as to whether to undergo the Defendant's choice of treatment.
7. The severe and permanent personal injuries sustained by the Plaintiff, Donald C. Preston, were the direct and proximate result of the Defendant, The United States of America, by its agents', servants', or employees' failure to obtain the informed consent of the Plaintiff.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, by its agents, servants, or employees, in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT V.

1. THE PLAINTIFF, **Donald C. Preston**, repeats and reavers all of the allegations contained in Paragraphs One through Eight of Count I, Paragraphs One through Three of Count II, Paragraphs One through Six of Count III, and Paragraphs One through Seven of Count IV above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the Plaintiff, Donald C. Preston.
3. As the direct and proximate result of the Defendant, The United States of America, by its agents', servants', or employees' failure to inform the Plaintiff of the alternatives to and risks and potential consequences of the Defendant's treatment, the Plaintiff, Donald C. Preston, was caused to suffer severe and permanent personal injuries.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, by its agents, servants, or employees, in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT VI.

1. THE PLAINTIFF, **Suncha Preston**, is the wife of Donald C. Preston, and a resident of Methuen, Essex County, Commonwealth of Massachusetts, and the person entitled by marriage to the benefit of his full society, companionship, and consortium.
2. The Defendant, The United States of America, is a public employer within the meaning of 28 U.S.C. §1346(b) and 2671 *et seq.*, and at all times herein, Heather Cabral Silvero, D.O. was an employee of federally funded, Edith Nourse Rogers Memorial Veterans Hospital, which has been deemed by the Public Health Service eligible for protection under the Federal Tort Claims Act pursuant to 42 U.S.C. §233.
3. The Plaintiff, Suncha Preston, repeats and reavers fully herein the allegations contained in the aforementioned Counts pleaded by the Plaintiff, Donald C. Preston, against the Defendant, The United States of America, by its agents, servants, or employees, in this complaint as if each were set forth here in its entirety.
4. As the direct and proximate result of the Defendant, The United States of America, by its agents', servants', or employees' negligence and failure to obtain informed consent, the Plaintiff, Suncha Preston, has had severely restricted the benefit of the full services, society, and affection of her husband, Donald C. Preston, all to her great damage.

WHEREFORE, THE PLAINTIFF, Suncha Preston, prays judgment against the Defendant, The United States of America, by its agents, servants, or employees, in an amount which is just and appropriate to compensate her for her injuries, together with interest and costs.

COUNT VII.

1. THE PLAINTIFF, **Donald C. Preston**, is resident of Methuen, Essex County, Commonwealth of Massachusetts.
2. The Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, was at all times relevant to this complaint a physician licensed to practice medicine in the Commonwealth of Massachusetts with a principle place of business at Edith Nourse Rogers Memorial Veterans Hospital, 200 Springs Road, Bedford, Middlesex County, Massachusetts.
3. This action is brought to recover for the severe and permanent personal injuries of Donald C. Preston pursuant to 28 U.S.C. §§1346 and 2671 *et seq.*

4. At all times relevant to this complaint, the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, represented and held herself out to be skilled in the treatment of various illnesses and conditions and, in particular, represented to the Plaintiff that she was knowledgeable, competent, and qualified to diagnose and treat Donald C. Preston in or about December, 2012 to April, 2018.
5. In or about December, 2012 to April, 2018, the Plaintiff, Donald C. Preston, submitted himself to the care and treatment of the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, who negligently and carelessly and without regard for the Plaintiff's health and well-being, treated Donald C. Preston in a manner which resulted in the his severe and permanent personal injuries.
6. The severe and permanent personal injuries sustained by the Plaintiff, Donald C. Preston, were the direct and proximate result of the carelessness, unskillfulness, negligence, and improper care and treatment by the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, including but not limited to the following:
 - a. her misrepresentations to the Plaintiff that she was knowledgeable, skillful, and competent to diagnose and treat Mr. Preston in or about December, 2012 to April, 2018;
 - b. her failure to adequately and properly diagnose the medical condition of Mr. Preston in or about December, 2012 to April, 2018, and her failure to properly treat said condition;
 - c. her failure to recognize, or to have the knowledge to recognize, her inability and lack of skill to treat Mr. Preston, when she knew, or should have known, of the foreseeable consequences of her inability and failure to properly and skillfully provide the Plaintiff with acceptable medical care and treatment;
 - d. her failure to possess and exercise that degree of skill, training, and care as is possessed and exercised by the average qualified members of the medical profession practicing her specialty;
 - e. her failure to inform and to warn of the risks involved in or associated with the condition of Mr. Preston and failure to inform and to warn about the treatment of said condition.
7. As a direct and proximate result of the negligence, carelessness, and unskillfulness of the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, the Plaintiff, Donald C. Preston, was caused to suffer severe and permanent personal injuries.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O., in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT VIII.

1. THE PLAINTIFF, **Donald C. Preston**, repeats and reavers all of the allegations contained in Paragraphs One through Seven of Count VII above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the Plaintiff, Donald C. Preston.
3. As the direct and proximate result of the carelessness and negligence of the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, Donald C. Preston was caused to suffer conscious pain and suffering.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O., in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT IX.

1. THE PLAINTIFF, **Donald C. Preston**, is a resident of Methuen, Essex County, Commonwealth of Massachusetts.
2. The Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, was at all times relevant to this complaint a physician licensed to practice medicine in the Commonwealth of Massachusetts with a principle place of business at Edith Nourse Rogers Memorial Veterans Hospital, 200 Springs Road, Bedford, Middlesex County, Massachusetts.
3. This action is brought to recover for the severe and permanent personal injuries of Donald C. Preston pursuant to 28 U.S.C. §§1346 and 2671 et seq.
4. At all times relevant to this complaint, the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, represented and held herself out to be skilled in the treatment of various illnesses and conditions and, in particular, represented to the Plaintiff that she was knowledgeable, competent, and qualified to diagnose and treat Donald C. Preston in or about December, 2012 to April, 2018.
5. In or about December, 2012 to April, 2018, the Plaintiff, Donald C. Preston, submitted himself to the care and treatment of the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, who negligently, carelessly, and

recklessly and without regard for the Plaintiff's health and well-being, treated Mr. Preston in a manner which resulted in his severe and permanent personal injuries.

6. The severe and permanent personal injuries sustained by the Plaintiff, Donald C. Preston, were the direct and proximate result of the malicious, willful, wanton, or reckless conduct of the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, or by the gross negligence of the Defendant in or about December, 2012 to April, 2018.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O., in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT X.

1. THE PLAINTIFF, **Donald C. Preston**, repeats and reavers all of the allegations contained in Paragraphs One through Seven of Count VII, Paragraphs One through Three of Count VIII, and Paragraphs One through Six of Count IX above, as if expressly rewritten and set forth herein.
2. In or about December, 2012 to April, 2018, average qualified members of the medical profession practicing the Defendant's specialty knew or should have known of the risks, potential consequences, and alternatives to the Defendant's choice of treatment of Donald C. Preston.
3. In or about December, 2012 to April, 2018, the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, knew or should have known of the risks, potential consequences, and alternatives to the Defendant's choice of treatment of Donald C. Preston.
4. In or about December, 2012 to April, 2018, the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, did not inform the Plaintiff of the alternatives to and risks and potential consequences of the Defendant's choice of treatment of Donald C. Preston.
5. If the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, had informed the Plaintiff of the alternatives to and risks and potential consequences of the Defendant's choice of treatment of Donald C. Preston, neither the Plaintiff nor a reasonable person in his position would have elected the Defendant's choice of treatment.
6. The alternatives to and the risks and potential consequences of the Defendant's choice of treatment were material to a decision by the Plaintiff and a reasonable person in his position as to whether to undergo the Defendant's choice of treatment.

7. The severe and permanent personal injuries sustained by the Plaintiff, Donald C. Preston, were the direct and proximate result of the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O.'s failure to obtain the informed consent of the Plaintiff.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O., in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT XI.

1. THE PLAINTIFF, **Donald C. Preston**, repeats and reavers all of the allegations contained in Paragraphs One through Seven of Count VII, Paragraphs One through Three of Count VIII, Paragraphs One through Six of Count IX, and Paragraphs One through Seven of Count X above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the Plaintiff, Donald C. Preston.
3. As the direct and proximate result of the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O.'s failure to inform the Plaintiff of the alternatives to and risks and potential consequences of the Defendant's treatment, the Plaintiff, Donald C. Preston, was caused to suffer severe and permanent personal injuries.

WHEREFORE, THE PLAINTIFF, Donald C. Preston, prays judgment against the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O., in an amount which is just and appropriate to compensate him for his injuries, together with interest and costs.

COUNT XII.

1. THE PLAINTIFF, **Suncha Preston**, is the wife of Donald C. Preston, and a resident of Methuen, Essex County, Commonwealth of Massachusetts, and the person entitled by marriage to the benefit of his full society, companionship, and consortium.
2. The Defendant, United States of America, through Heather Cabral Silvero, D.O., a government employee, was at all times relevant to this complaint a physician licensed to practice medicine in the Commonwealth of Massachusetts with a principle place of business at Edith Nourse Rogers Memorial Veterans Hospital, 200 Springs Road, Bedford, Middlesex County, Massachusetts.
3. The Plaintiff, Suncha Preston, repeats and reavers fully herein the allegations contained in the aforementioned Counts pleaded by the Plaintiff, Donald C. Preston, against the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O., a government employee, in this complaint as if each were set forth here in its entirety.

4. As a direct and proximate result of the Defendant, The United States of America, through its employee, Heather Cabral Silvero, D.O.'s negligence and failure to obtain informed consent, the Plaintiff, Suncha Preston, has had severely restricted the benefit of the full services, society, and affection of her husband, Donald C. Preston, all to her great damage.

WHEREFORE, THE PLAINTIFF, Suncha Preston, prays judgment against the Defendant, The United States of America, through Heather Cabral Silvero, D.O., a government employee, in an amount which is just and appropriate to compensate her for her injuries, together with interest and costs.

**DONALD C. PRESTON AND SUNCHA
PRESTON,**

/s/ Elizabeth N. Mulvey

/s/ Florence A. Carey

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